IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL Plaintiff vs. TROOPER VICTOR STERNBY Defendant	: : : : : :	 CIVIL ACTION NO. 05-154E

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF UNCONTESTED FACTS

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted in part, denied in part. It is admitted only that Defendant made a report and that notations on the first page of his report refer to Sternby's observations of Bill before the field sobriety tests were administered and while they were being attempted. However, it is specifically denied that said sobriety tests were completed. To the contrary, Bill refused to perform one test and was unable to understand the instructions of another. The third test was never administered. Sternby deposition transcript page 34-40.

6. Admitted.

7. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

8. Admitted.

9. Admitted. By way of further answer, it is believed and therefore averred that Plaintiff was leaning against the vehicle because he was too intoxicated to stand.

10. Denied. Mr. Joyce has not testified in this case and Plaintiff has no independent recollection of the events and therefore cannot admit the averments contained in this paragraph. Denied. The averments contained in this paragraph concern the state of mind of Trooper Sternby and Plaintiff is therefore not in a position to admit or deny what Trooper Sternby "believed".

11. Admitted.

12. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

13. Denied. It is specifically denied that Plaintiff was cognizant of what Trooper Sternby was telling him. To the contrary, by Trooper Sternby's own admissions, Plaintiff did not understand at least apart of what Trooper Sternby was telling Plaintiff. Sternby deposition transcript page 34-40.

14. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

15. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

16. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph, however, it is admitted that Plaintiff was too intoxicated to understand the instructions.

17. Admitted in part. It is admitted only that Sternby testified to this at his deposition. However, Plaintiff cannot admit the truth of this statement as it pertains to Sternby's memory.

18. Denied. It is specifically denied that Sternby walked with Plaintiff to the front of the patrol car. To the contrary, Sternby walked ahead of Plaintiff and to the right of him, allowing an extremely intoxicated person to walk unescorted.

19. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph, however, it is admitted that Plaintiff was too intoxicated to understand the instructions.

20. Admitted in part. It is admitted only that Sternby testified to this at his deposition. However, Plaintiff cannot admit the truth of this statement as it pertains to Sternby's state of mind and intent.

21. Admitted.

22. Admitted.

23. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

24. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

25. Admitted.

26. Admitted in part. It is admitted only that Sternby testified to this at his deposition. However, Plaintiff cannot admit the truth of this statement as it pertains to Sternby's memory.

27. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph. It is admitted that an ambulance arrived.

28. Admitted in part. It is admitted only that Sternby testified to this at his deposition. However, Plaintiff cannot admit the truth of this statement as it pertains to Sternby's memory. However, it is admitted that a blood test was administered and that it indicated that Plaintiff had a BAC of .25.

29. Admitted.

30. Admitted.

31. Admitted in part, denied in part. It is admitted that Sternby testified to this, however, it is submitted that Sternby knew well before retrieving the PBT that Plaintiff was too intoxicated to drive safely.

32. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph.

33. Admitted in part. It is admitted only that Sternby testified to this at his deposition. However, Plaintiff cannot admit the truth of this statement.

34. Admitted in part, denied in part. It is admitted only as to what the video reflects. Plaintiff has no memory of the event and cannot admit or deny the remaining portions of the averments contained in this paragraph. It is specifically denied that Plaintiff was capable of standing on his own without falling as was demonstrated by his leaning on his vehicle.

PLAINTIFF'S COUNTER-STATEMENT OF UNCONTESTED FACTS

35. When Defendant woke Plaintiff he had a strong odor of alcohol on his breath, had bloodshot eyes and a disheveled appearance.

36. When Defendant asked Plaintiff to get his license and registration, Plaintiff had difficulty doing it.

37. Plaintiff was unable to complete the field sobriety tests.

38. Plaintiff had slurred speech and difficulty understanding instructions.

39. Defendant knew that it was possible that Plaintiff could fall and hurt himself.

40. A PBT test can be administered sitting down.

41. The results of a PET test is not admissible in Court.

42. Defendant had probable cause to arrest the Plaintiff without taking a PBT.

43. Defendant had probable cause to request a blood test without taking a PBT.

44. Defendant was more concerned about the validity of the arrest than he was about the safety of Mr. Bill.

45. Defendant removed Plaintiff from a position of safety and placed him into a position of danger.

Respectfully submitted by:
KANE & SILVERMAN, P.C.

By: S/Steven C. Feinstein
Steven C. Feinstein, Esquire

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WILLIAM ROBERT BILL Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE POLICE, et. al. Defendants	:	CIVIL ACTION NO. 05-154E

CERTIFICATE OF SERVICE

I, Steven C. Feinstein, Esquire, certify that on this 17th day of May, 2006, I forwarded a copy of Plaintiff's Response to Defendant's Statement of Uncontested Facts and Counter -Statement of Uncontested Facts to the following:

Mary Lynch Friedline
564 Forbes Avenue, Manor Complex
Pittsburgh, PA 15219

Respectfully submitted by:
KANE & SILVERMAN, P.C.

By: S/Steven C. Feinstein
Steven C. Feinstein, Esquire
Attorney for Plaintiff